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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,833	09/28/2001	David B. Kumhyr	AUS920010401US1	4999

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EXAMINER
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DENNISON, JERRY B

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/966,833

Applicant(s)

KUMHYR ET AL.

Examiner

J. Bret Dennison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-11,13-28 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-11,13-28 and 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Action is in response to Amendment for Application Number 09/966,833 received 02 February 2005.
2. Claims 1, 3-11, 13-28, and 30-32 are presented for examination.

#### ***Claim Objections***

Claim 6 is objected to because of the following informalities: Claim 6 is dependent on a canceled claim (claim 2). Examiner will interpret the claim as dependent on claim 1. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 3-11, 13-28, and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Olsen et al. (U.S. Patent Number 5,987,376).

3. Regarding claims 1, 4, 9, 13, 19, 23, and 28, Olsen discloses a method and computer-usable carrier medium for establishing a computer-based communications session involving a user of a computer, said method comprising:

determining the availability of a potential participant in the communications session (Olsen, col. 6, lines 1-15, Olsen teaches application data that reflects the current state of the session, including current participants); wherein said determining comprises retrieving availability information for the participant from a data structure (Olsen, col. 7, lines 45-60, Olsen disclosed each available player having a player ID which is an identifier that uniquely identifies a particular client within the application session); and

according to the determined availability, displaying information on a display screen of the computer (Olsen, col. 6, lines 15-20, Olsen teaches the application data being available to clients of the system);

obtaining availability information indicating the availability of a user of the computer for communication using multiple communications applications (Olsen, col. 5, lines 50-55, 57-67, col. 6, lines 1-5, Olsen discloses providing availability information to all users using multiple dissimilar applications); and

wherein the information is stored in a data structure (Olsen, col. 7, lines 45-60).

4. Regarding claim 3, Olsen discloses the limitations, substantially as claimed, as described in claim 1, including wherein the data structure is stored on an additional computer (Olsen, col. 7, last paragraph).

5. Regarding claim 5, Olsen discloses the limitations, substantially as claimed, as described in claim 1, including wherein said displaying comprises displaying, for a given

communications application, a list of participants available for a communications session using the given communications application (Olsen, col. 6, lines 10-15).

6. Regarding claim 6, Olsen discloses the limitations, substantially as claimed, as described in claim 1, including wherein the availability information for the participant is within an object in an object-based programming approach (Olsen, col. 6, lines 10-15).

7. Regarding claim 7, Olsen discloses the limitations, substantially as claimed, as described in claim 6, including wherein the object further comprises participant identifiers effective to identify the participant to each of multiple communications applications, and indication of the availability of the participant for each of the multiple communications applications (Olsen, col. 6, lines 10-15).

8. Regarding claim 8, Olsen discloses the limitations, substantially as claimed, as described in claim 1, including receiving from the user, notification of a desired communications application to be used for the communications session (Olsen, col. 5, lines 50-55); and if the potential participant is available using the desired communications application, retrieving a participant identifier effective to identify the participant to the communications application (Olsen, col. 7, line 45 through col. 8, line 40, Olsen teaches new participants joining the session and retrieving a unique id).

9. Regarding claim 10, Olsen discloses the limitations, substantially as claimed, as described in claim 9, including further comprising displaying the availability information on a display screen of the computer (Olsen, col. 6, lines 5-20, Olsen teaches the application data available to all clients).

10. Regarding claim 11, Olsen discloses the limitations, substantially as claimed, as described in claim 9, including sending the availability information to an additional computer (Olsen, col. 6, lines 20-25).

11. Regarding claim 14, Olsen discloses the limitations, substantially as claimed, as described in claim 13, including wherein said means for determining and means for displaying comprise a communications aggregation program stored on a storage medium within the system (Olsen, col. 6, lines 5-20).

12. Regarding claim 15, Olsen discloses the limitations, substantially as claimed, as described in claim 14, including wherein the display screen and storage medium are associated with the same computer system (Olsen, col. 6, lines 20-25).

13. Regarding claim 16, Olsen discloses the limitations, substantially as claimed, as described in claim 14, including wherein the communications aggregation program is adapted to access a data structure including the participant availability information (Olsen, col. 7, lines 45-55).

14. Regarding claim 17, Olsen discloses the limitations, substantially as claimed, as described in claim 14, including wherein the data structure and communications aggregation program are stored on different storage media associated with different computer systems (Olsen, col. 8, lines 5-16).

15. Regarding claim 18, Olsen discloses the limitations, substantially as claimed, as described in claim 13, including further comprising: means for receiving, from an initiator of the session, notification of a desired communications application to be used for the communications session (Olsen, col. 7, lines 30-45, Olsen discloses admitting clients to the application session); and means for, if the potential participant is available using the desired communications application, retrieving a participant identifier effective to identify the participant to the communications application (Olsen, col. 7, lines 45-67, Olsen discloses retrieving a participant identifier).

16. Regarding claim 20, Olsen discloses the limitations, substantially as claimed, as described in claim 19, including wherein the first and second program instructions are included within a communications aggregation program stored on the carrier medium (Olsen, col. 6, lines 20-25).

17. Regarding claim 21, Olsen discloses the limitations, substantially as claimed, as described in claim 19, including wherein the initiating computer is the same computer on

which the program instructions are executable (Olsen, col. 6, lines 20-30, col. 7, line 20-45).

18. Regarding claim 22, Olsen discloses the limitations, substantially as claimed, as described in claim 19, including third program instructions executable on the computer for receiving from the initiator of the communication session, notification of a desired communications application to be used (Olsen, col. 7, lines 25-35); and fourth program instructions executable on the computer for, if the potential participant is available using the desired communications application, retrieving a participant identifier effective to identify the participant to the desired communications program (Olsen, col. 7, lines 45-60).

19. Regarding claim 24, Olsen discloses the limitations, substantially as claimed, as described in claim 23, including wherein the data structure further stores the information indicating availability for each of multiple potential participants (Olsen, col. 7, lines 45-65, Olsen teaches participant identifiers indicating availability of the participant in the session).

20. Regarding claim 25, Olsen discloses the limitations, substantially as claimed, as described in claim 23, including wherein the data structure further stores a set of participant identifiers effective to identify the potential participant to each of the plurality



of dissimilar communications applications (Olsen, col. 7, lines 45-65, Olsen teaches participant identifiers indicating availability of the participant in the session).

21. Regarding claim 26, Olsen discloses the limitations, substantially as claimed, as described in claim 25, including wherein the set of participant identifiers and the availability information for each participant are within an object in an object-based programming approach (Olsen, col. 7, lines 45-65, Olsen teaches participant identifiers indicating availability of the participant in the session).

22. Regarding claim 27, Olsen discloses the limitations, substantially as claimed, as described in claim 23, including wherein the potential participant is a user of a computer within which the carrier medium is located (Olsen, col. 6, lines 1-5, lines 20-25).

23. Regarding claim 30, Olsen discloses the limitations, substantially as claimed, as described in claim 28, including further comprising, according to the determined availability, displaying information on the display screen of the computer (Olsen, col. 6, lines 5-20, Olsen teaches the application data available to all clients).

24. Regarding claim 31, Olsen discloses the limitations, substantially as claimed, as described in claim 30, including wherein said displaying comprises displaying, for a given participant, availability for each of a plurality of dissimilar communications applications available for use in the communications session (Olsen, col. 6, lines 5-20, Olsen teaches the application data available to all clients).

25. Regarding claim 32, Olsen discloses the limitations, substantially as claimed, as described in claim 30, including wherein said displaying comprises displaying, for a given communications application, a list of participants available for a communications session using the communications application (Olsen, col. 6, lines 5-20, Olsen teaches the application data available to all clients).

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1 and 3-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Quantrano et al. (U.S. Patent Number 6,748,420).

26. Regarding claim 1, Quantrano discloses a method of establishing a computer-based communications session involving a user of a computer, said method comprising:  
determining the availability of a potential participant in the communications session, wherein said determining comprises retrieving availability information for the participant from a data structure (Quantrano, col. 5, lines 55-57, Quantrano discloses

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creating shared session identification information for sessions including multiple users);  
and

according to the determined availability, displaying information on a display screen of the computer (Quantrano, col. 5, lines 57-67, Quantrano discloses providing the information to each user); and

27. Regarding claim 3, Quantrano discloses the limitations, substantially as claimed, as described in claim 2, including wherein the data structure is stored on an additional computer (Quantrano, col. 5, lines 55-62).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-11, 13-28, and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Bauer, JR. et al (U.S. Patent Application 2002/0083134).

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28. Regarding claims 1, 4, 9, 13, 19, 23, and 28, xxx discloses a method and computer-usable carrier medium for establishing a computer-based communications session involving a user of a computer, said method comprising:

determining the availability of a potential participant in the communications session, wherein said determining comprises retrieving availability information for the participant from a data structure (Bauer, page 3, paragraph 25); and

according to the determined availability, displaying information on a display screen of the computer (Bauer, page 3, paragraph 25,31); and

obtaining availability information indicating the availability of a user of the computer for communication using multiple communications applications (Bauer, page 3, paragraph 25).

### ***Response to Amendment***

Applicant's arguments and amendments filed on 2 February 2005 have been carefully considered but they are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the following new grounds of rejection as explained here below, necessitated by Applicant's substantial amendment (i.e., *by incorporating new limitations into the independent claims, which will require further search and consideration*) to the claims which significantly affected the scope thereof.

Applicant's arguments with respect to claims 1, 3-11, 13-28, and 30-32 have been fully considered but they are not persuasive. Applicant's arguments include the failure of previously applied art to expressly disclose the teachings of "conducting a

computer-based communications session using the most appropriate communications application” and “determining the availability of potential participants in the communications session” [see Applicant’s Response, page 10 of 14].

Examiner is unable to find in the claimed invention anything about “using the most appropriate communications application.” Even if this limitation were in the claimed invention, it would be unclear as to how the determination is made as to which application is most appropriate. The only limitation that Examiner finds to be remotely close to this is a “desired communications application.” However, this is not the same as the “most appropriate application.” Regarding the “desired application,” it is evident from the mappings found in the above rejection that Olsen disclosed the client executing an application among a plurality of applications. Regarding “determining the availability of potential participants in the communications session,” the claimed invention does not explain how this determination is made, other than retrieving availability information from a data structure. Olsen disclosed players of a session having a unique player ID, indicating they are available in the session, where the player ID is a thirty-two bit data structure.

Thus, Applicant’s arguments drawn toward distinction of the claimed invention and the prior art teachings on this point are not considered persuasive. It is also clear to the Examiner that Olsen clearly taught the independent claims of the Applicant’s claimed invention.

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Applicant's arguments with respect to claims 1, 3-11, 13-28, and 30-32 are deemed moot in view of the following new grounds of rejection, necessitated by Applicant's amendment to the claims, which significantly affected the scope thereof.

Furthermore, as it is Applicant's right to continue to claim as broadly as possible their invention, it is also the Examiner's right to continue to interpret the claim language as broadly as possible. It is the Examiner's position that the detailed functionality that allows for Applicant's invention to overcome the prior art used in the rejection, fails to differentiate in detail how these features are unique. As it is extremely well known in the networking art as already shown by Olsen as well as other prior arts of records disclosed, "establishing a computer-based communication session" is taught as well as other claimed features of Applicant's invention. By the rejection above, the applicant must submit amendments to the claims in order to distinguish over the prior art use in the rejection that discloses different features of Applicant's claimed invention.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

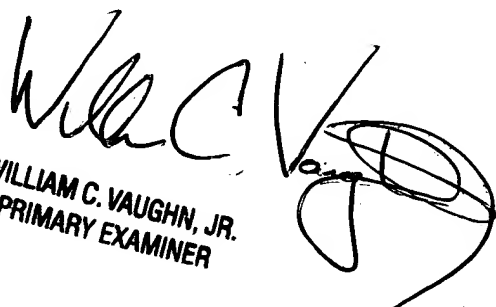
Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571)272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (703)308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. B. D.  
Patent Examiner  
Art Unit 2143



WILLIAM C. VAUGHN, JR.  
PRIMARY EXAMINER